## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:13-cv-477-RJC

(3:12-cr-16-RJC-1)

RUSSELL WAYNE MILLER,	)	
Petitioner, v.	)	
UNITED STATES OF AMERICA,	)	<u>ORDER</u>
Respondent.	)	

**THIS MATTER** is before the Court on initial review of the petition filed by Russell Miller, pursuant to 28 U.S.C. § 2255. (Doc. No. 1). For the reasons that follow, this action will be dismissed without prejudice.

On July 9, 2013, this Court sentenced Petitioner after a jury found him guilty drug trafficking and firearms offenses. (3:12-cr-16-RJC, Doc. No. 23: Jury Verdict; Doc. No. 37: Judgment). On August 21, 2013, Petitioner pro se filed the instant § 2255 motion, (<u>Id.</u>, Doc. No. 36), and on August 27, 2013, Petitioner's counsel filed a timely notice of appeal, (<u>Id.</u>, Doc. No. 39). Because Petitioner's criminal case is now pending on direct appeal, the Court will dismiss the § 2255 motion without prejudice to his re-filing the motion upon conclusion of direct review, if he so chooses.

IT IS, THEREFORE, ORDERED that Petitioner's Motion to Vacate, (Doc. No. 1), is **DISMISSED** without prejudice.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing

Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not

made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: November 21, 2013

Robert J. Conrad, Jr.

United States District Judge